



Agenda Number: 14 CSU-80027 September 3, 2008

Applicant: Tamara H. Morse Co-

Trustee

Agent: R2 Consulting Services

**Location:** 302 Wayne Rd. NW

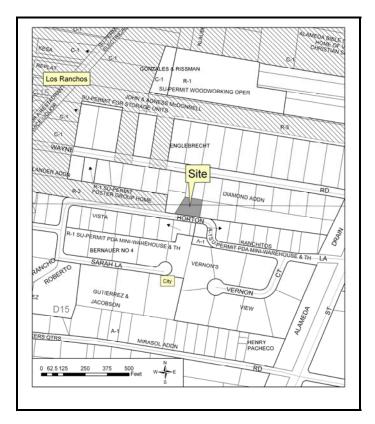
**Property Size:** .29 acres (approximately)

Existing Zone: R-1

Proposed Special Use Permit for Zoning/SUP Specific Use for Multiple

Single Family Dwellings

Recommendation: Approval



**Summary:** This request is for a Special Use Permit for Specific Use for Multiple Single Family

Dwellings on a .29 acre property located on the south side of Wayne Rd. north of Horton Rd. The property is currently zoned R-1 and has two dwelling units on it. The Special Use

Permit would legitimize the existing land use.

Staff Planner: Catherine VerEecke, Program Planner

**Attachments:** 1. Application

2. Area and Land Use Maps

3. Petition of support

4. Site Plan (Commissioners only)

Bernalillo County Departments and other agencies reviewed this application from to 7-29-08 to 8-11-08. Their comments were used in preparation of this report, and begin on Page 10.

AGENDA ITEM NO.: 14 County Planning Commission September 3, 2008

CSU-80027 R2 Consulting Services, agent for Tamara H. Morse Co-Trustee, requests approval of a Special Use Permit for a Specific Use for Multiple Single Family Dwellings on Lot 9B, Diamond Addition, located at 302 Wayne Road NW, zoned R-1, and containing approximately .29 acres. (D-15)

# AREA CHARACTERISTICS AND ZONING HISTORY Surrounding Zoning & Land Uses

	Zoning	Land use
Site	R-1	Two single family residential dwellings
North	R-1	Single family residential
South	R-1/Special Use Permit for Planned Development Area	Townhomes
East	R-1	Single family residential
West	R-1	Single family residential

#### **BACKGROUND:**

# The Request

This request is for a Special Use Permit for Specific Use for Multiple Single Family Dwellings on a .29 acre property located on the south side of Wayne Rd. north of Horton Rd. The property is currently zoned R-1 and has two dwelling units on it, attached by a narrow metal breezeway. The property has access from Wayne Rd. by way of a private access easement.

The agent states that the current owner of the property is seeking to legitimize the two dwelling units on one lot. The owner purchased the property three years ago and evidently was not aware that the property did not comply with the zoning of the property. However, building permits were issued for both structures. Under the request, the 2460 square foot single family dwelling and a 598 square foot guest house (with kitchen) would remain on the property. According to the agent, it appears that the property meets the landscaping and fencing requirements except along an access easement within the property. However, the agent notes that the land use appears to encroach on the access easement, and the structures may not meet some of the setback requirements. The agent also requests that the Special Use Permit be granted for the life of the use.

# Request justification.

In the response to Resolution 116-86, the agent states that the property's land use has been in existence for more than ten years. The agent argues that the proposed land use change is appropriate for the property and does not conflict with adopted elements of the Comprehensive Plan or the North Valley Area Plan. He states the proposed use is consistent with the surrounding area, which has a rural character and a few properties developed in a similar manner. The agent points out that properties to the south are developed with townhomes under a Special Use Permit and that a property with a Special Use Permit for a Group Home is located on Wayne Rd. near the subject property.

# **Surrounding Land Uses and Zoning**

The subject property is located in a residential neighborhood between Second St. and Fourth St., about 1000 feet south of Paseo del Norte. Most properties have R-1 zoning. In 2005, a property about 200 feet to the southwest of the property received a zone change from A-1 to R-1 (CZ-20005). About 500 feet to the west of the property a Special Use Permit exists on a property for a Foster Group Home (CSU-86-12). To the south of the property, a Planned Development Area was approved for Townhomes and Mini-Warehouses, which were developed only with duplexes (CSU-83-54). About 1000 feet to the east of the subject property along Second St., one property has received a zone changes to R-2, and another has received a Special Use Permit to allow for multi-family uses (CZ-97-7, CZ-20007).

To the west of the subject site nearby Fourth St., properties are located within the Village of Los Ranchos.

#### **APPLICABLE PLANS AND POLICIES:**

## Albuquerque/Bernalillo County Comprehensive Plan

The site is located in the Rural Area as delineated in the Albuquerque/Bernalillo County

Comprehensive Plan. The principal goal for this area is to "maintain the separate identity of rural areas as alternatives to urbanization by guiding development compatible with their open character, natural resources, and traditional settlement patterns."

Policy 3.a of the Plan (Land Use) states that "Rural Areas as shown by the Plan Map shall generally retain their rural character with development consisting primarily of ranches, farms, and single-family homes on large lots; higher density development may occur at appropriate locations – within rural villages or planned communities. Overall gross densities shall not exceed one dwelling unit per acre."

# North Valley Area Plan

This property is located within the Rural Area of the North Valley Area Plan. The Plan states, following the Comprehensive Plan, that overall densities should not exceed one dwelling unit per acre in the Rural Area.

Policy 2 (Land Use) states 'The City and County shall stabilize residential zoning and land use in the North Valley Area.' This may be accomplished through the following:

- a. Limit the location, duration, and type of new uses allowed by Special Use Permit.
- Cancel discontinued Special Use Permits granted where existing conditions of approval are not met and permits that are otherwise in violation of the Zoning Ordinance.
- c. Retain existing County A-1 zoning as the only Rural Agricultural zone intended to provide agricultural activities and spacious development.
- d. Require landscape buffering and other measures necessary to limit potential impacts of non-residential uses on residential areas.
- e. Retain the low density character of the North Valley.

#### **Bernalillo County Zoning Ordinance**

Resolution 116-86 lists policies for evaluating a Zone Map changes and Special Use Permit applications.

- A. A proposed land use change must be found to be consistent with the health, safety, and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan of other Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. There was an error in the original zone map.
  - 2. Changed neighborhood or community conditions justify a change in land use or

- A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. A proposed land use change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the County may be:
  - 1. denied due to lack of capital funds; or
  - 2. granted with the implicit understanding that the County is not bound to provide the capital improvements on any special schedule.
- H. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- I. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted land use plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.
- J. A zone change request which would give a zone different from the surrounding zoning to a strip of land along a street is generally called a "strip zoning." Such a change of zone may be approved only when:
  - The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone due to traffic or special adverse uses nearby.

# **ANALYSIS:**

# **Surrounding Land Use and Zoning**

The applicant has requested a Special Use Permit for Multiple Single Family Dwellings to allow two single family dwelling units to remain on the subject property. The applicant's agent argues that the property has been developed with the two dwellings for a number of years, and

the request has come about to bring the property into compliance with current County Zoning requirements. Staff has confirmed that building permits were obtained in the 1990s for both structures. The request will allow the continued use of the existing structures on the site.

Although the .29 acre subject property is substandard for R-1 zoning in the Rural Area (.75 acres is the minimum lot size) and has two dwellings on it, the proposed land use and density appear to be relatively compatible with that of the surrounding area. This includes a variety of lot sizes with R-1 zoning, some of which are less than the three-quarter acres required. There also are townhomes to the south of the subject site on lots of about .2 acres developed under a Special Use Permit for a Planned Development Area and other multi-family uses in the general vicinity of the site. Therefore, the proposed development would not be out of character for the area.

#### **Plans**

The North Valley Area Plan policies and plan scenarios give strong preference to maintaining the existing residential zoning in order to retain low density development and the 'rural character' in the areas designated as Rural and Semi-Urban. Although this request is proposing a higher density (due in part to the size of the lot), it still gives the appearance of being rural with the provision of landscaping and an open area.

# **Zoning Ordinance**

It appears this request is consistent with Resolution 116-86 of the Zoning Ordinance. "Changed neighborhood conditions" can be used as a justification for this request as there has been some higher density residential developments in the form of cluster-type housing or townhomes approved in the general area of the site. The request is not inconsistent with policies in the North Valley Area Plan for the Rural Area, which call for the continuation of residential uses in the area. A petition of support and a statement of unique conditions have been provided in accordance with Section 18.32.a of the Zoning Ordinance (Special Use Permit for Specific Use).

### **Agency Comments**

County staff and representatives from other agencies have noted a few issues with the site development plan.

The County Zoning Administrator's comments indicate that the property appears to be not legally conforming. Along the west side of the property, the guest house and the metal shed are located within the access easement, and they do not meet the 20 foot front setback requirement. The adobe wall also appears to encroach in the right-of way and on adjacent properties. Landscaping appears not to be sufficient along the north, south, and west property lines.

Environmental Health staff's comments state that documentation regarding water and sewer connections for both buildings on the site is needed.

# **Analysis Summary**

Zoning	
Resolution 116-86	Changed neighborhood conditions—higher density
	residential development nearby the site.
Requirements	Petition of support has been provided.
Plans	
Comprehensive Plan	Appears to be generally consistent with policies that call for rural, residential uses.
North Valley Area Plan	Appears to be generally consistent with policies that call for residential uses in the rural area.
Other Requirements	
Environmental Health	Provide evidence of permits for water and connections for both houses on the site.
Public Works	No adverse comments.
Zoning	Property appears to be not legally conforming in terms of setbacks and possible encroachment into access easement. Landscaping may not be sufficient.

#### Conclusion

There appears to be justification for the approval of the request for a Special Use Permit for Multiple Single Family Dwellings on the subject property. The North Valley Area Plan and the Comprehensive Plan state a preference for rural residential development in the general vicinity of the site. In addition, properties in the vicinity of the site have smaller lots than are now required under R-1 zoning, some of which appear to pre-date the zoning and others allowed under Special Use Permits. If approved, this request would bring the land use into compliance with current County standards, under a Special Use Permit. However, it appears the property does not meet County standards as regards landscaping and the front setback, and some of the development appears to be located outside the property line.

APPROVAL of CSU-80027, based on the following Findings, with the following Conditions of Approval.

Catherine VerEecke Program Planner

#### FINDINGS:

- 1. This request is for approval of a Special Use Permit for a Specific Use for Multiple Single Family Dwellings (two single family dwelling units) on Lot 9B, Diamond Addition, located at 302 Wayne Road NW, zoned R-1, and containing approximately .29 acres.
- 2. This request would allow two existing dwelling units to remain on one legal lot of record.
- 3. The request is not in significant conflict with the policies set forth for the Rural Area of the Albuquerque/Bernalillo County Comprehensive Plan and the North Valley Area Plan.
- 4. This request is consistent with Resolution 116-86 in that there are changed neighborhood conditions justifying the land use change including the development of higher density residential developments and multi-family dwellings nearby the site.
- 5. The request has substantial neighborhood support.
- 6. The request is consistent with the health, safety and general welfare of the residents of the County.

#### **CONDITIONS OF APPROVAL:**

- 1. Lighting shall be site specific. Lighting fixtures shall be provided so that no fugitive light crosses onto adjacent lots.
- 2. The property owner shall provide evidence of sewer and water connections for both houses on the property to the Office of Environmental Health within three months of the final Board of County Commissioners' approval. A copy of the proof of connection shall be submitted to the Zoning, Building, Planning, and Environmental Health Department.
- 3. A 6 foot high solid wall shall be maintained along the side of the property that abuts residential use.
- 4. A minimum six (6) foot landscape buffer shall be located on the side of the property abutting residential uses in accordance with the standards outlined in the Zoning Ordinance to be established within six months of the final Board of County Commissioners' approval.
- 5. There shall be a 10 foot landscaped setback along public right-of-way and private access easement in accordance with the standards outlined in the Zoning Ordinance to be established within six months of the final Board of County Commissioners' approval.
- 6. Three copies of the revised site development plan consistent with the Conditions of Approval shall be submitted for review to the Zoning Administrator within two months after the final Board of County Commissioners' approval.
- 7. The applicant shall comply with all applicable Bernalillo County ordinances and regulations.
- 8. The Special Use Permit shall be issued for 20 years.
- 9. The foregoing conditions shall become effective and shall be strictly complied with immediately upon execution or utilization of any portion of the rights and privileges authorized by this Special Use Permit.

#### BERNALILLO COUNTY DEPARTMENT COMMENTS

# **Building Department:**

PERMITS AND REQUIRED INSPECTIONS SHALL BE OBTAINED FOR ANY CONSTRUCTION ON PROPERTY.

#### **Environmental Health:**

Provide proof of lawful connection to water and sewer to the guest house. Their is only one water and sewer account to this property and it appears that no plumbing permits or plumbing permits to connect to sewer were issued for the guest house.

# Zoning Administrator:

Proposed SUP for Multiple Single-Family Dwellings

"Multiple single-family dwellings" is first listed as a permissive use in the R-2 zone (Sec. 10), and necessitates additional considerations for density and useable open space on the site (Sec. 10.D.5. & 10.F respectively).

## **Distinctive Considerations**

The provided lot area of .244 acres limits the floor area ratio (FAR) to no more than 5,227.2 square feet, so the existing 2,460-sq. ft. SFD and the 598-sq. ft. guest house will fall within the density limitations. Similarly, useable open space is determined by the number of bedrooms contained within each unit. In looking at the size of the existing units, it appears that a sufficient amount of useable open space is provided onsite in order to meet this standard.

#### Landscaping

Both Section 10F.2. and Section 19 establish landscaping requirements for this type of development. Due to the overall size of the subject property, a landscaping setback area of at least 10 feet in depth is required along the east side of the property ("private access & private & public utility easement), as well as the south side (Horton Road). Also, 6-foot wide buffers along the portions of the property adjacent to residential uses (north & west sides). With the exception of the east side of the subject site, these standards are not being met.

Complicating this issue is the appearance of development outside of the property and within the right-of-way. The "6' adobe wall" is necessary to meet the screening requirements, but along the north, south, and west sides of the property it appears that this structure encroaches onto adjacent properties. Confirmation with the Public Works Division may be necessary to determine if this is acceptable as it exists or additional steps are necessary. Additionally, the vegetative coverage requirements along the north, south and west property lines are not in compliance with the ordinance (Sec. 19.D. & E.).

## **Parking**

Off-street parking is required for each unit at one space for each bathroom or fraction thereof, but not less than two spaces per dwelling (Sec. 21.A.5.). The noted size of the guest house and single-family dwelling appear to be consistent the parking standards,

but confirmation on the total number of bathrooms may be needed.

## Yard Requirements

The front property line is determined by the portion of the property bordering on a street (Sec. 5, "Lot Front Line of"), and a street is defined to mean "(t)hat portion of pubic right-of-way or private way or thoroughfare which is primarily devoted to vehicular use . . . " (Sec. 5, "Street"). Consequently, the western portion of the lot is the "front yard" and must meet the 20-foot setback requirement. Not only does the site plan show the guest house within the front yard setback area, the "metal shed" located at the SW corner of the site is not permitted to be within the front yard of the property either (Sec. 22.C.). Determination should be made concerning how/when the these structures were placed on the site, as a review of the aerial photos seem to indicate that these buildings are not legally nonconforming as to use and setbacks.

# Zoning Enforcement Manager:

Based on the above comments there is no adverse comments at this time. No zoning violations on property.

Fire:

NO ADVERSE COMMENTS AT THIS TIME.

**Public Works:** 

DRAN:

No comments received.

DRE:

No adverse comment to the SUP request. The request does not imply changes to the existing historic drainage patterns to this site.

Parks & Recreation:

REVIEWED NO COMMENT.

Sheriff's:

No comments received

# **COMMENTS FROM OTHER AGENCIES**

MRCOG:

MRCOG staff have no comment on the proposed development.

AMAFCA:

No comment.

# City Planning Department:

No comments.

## City Public Works:

Transportation Planning: No comments received.

Transportation Development:

No adverse comments.

## Water Utility Authority:

I have no comments for the September CPC cases.

# City Transit:

No comments received.

## City Open Space:

Open Space has no adverse comments.

#### **NMDOT**

Case description: Special use permit development for two single family dwellings

Location: 302 Wayne Road NW, Albuquerque NM

Type of development (Residential/commercial): Residential

Possible Impacted NMDOT roadway(s): NM 423 (Paseo Del Norte) and NM 47 (2nd

Street).

Departments Comments: Due to the size, and location of the development, there will be no significant impact to the state roadway system. Therefore, we have no requirements or objections to the processing of the requested special use permit.

## **PNM**

No comment based on the information provided to date.

#### **APS**

Diamond Addition, Lot 9-B, is located at 302 Wayne Rd NW. The owner of the above subdivision requests a Special Use, specific use to allow for two existing single family dwellings on one legal lot. This will have no adverse impacts to the APS district.

#### **NEIGHBORHOOD ASSOCIATIONS:**

Alameda North Valley Association